

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TIMOTHY C. LENHART,)	
)	Civil Action No. 11 – 312
Plaintiff,)	
)	District Judge Joy Flowers Conti
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
THE COMMONWEALTH OF PA,)	
NAPHCARE INC.,)	
WESTMORELAND COUNTY, and)	
WESTMORELAND COUNTY)	
PRISON,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case is before the Court on the Report and Recommendation of Chief Magistrate Judge Lisa Pupo Lenihan dated November 1, 2012 (ECF No. 83), recommending that the motions to dismiss filed by Defendant NaphCare Inc. (ECF No. 71), The Commonwealth of Pennsylvania (ECF No. 73), and Westmoreland County and Westmoreland County Prison (ECF No. 76) be granted and that the claims of plaintiff Timothy C. Lenhart (“plaintiff”) be dismissed with prejudice without further leave to amend.

Plaintiff initiated this action on March 9, 2011, pursuant to the Civil Rights Act of 1871, as amended by 42 U.S.C. § 1983. (ECF No. 1.) He alleged numerous violations of federal and state rights stemming from his pretrial detention confinement in the Westmoreland County Prison. (ECF No. 3.) After defendants filed motions to dismiss plaintiff’s complaint (ECF Nos. 31, 33, 39) and Magistrate Judge Lenihan entered a Report and Recommendation on the motions

(ECF No. 53), the court adopted the Report and Recommendation in part and afforded plaintiff the opportunity to amend his complaint with respect to several claims (ECF No. 60).

Plaintiff filed an amended complaint (ECF No. 70) dismissing two previous defendants (John Walton and the Westmoreland County Clerk of Court) and adding defendants Westmoreland County and Westmoreland County Prison. Defendants filed motions to dismiss Plaintiff's Amended Complaint (ECF Nos. 71, 73, 76) and, as noted above, the magistrate judge entered a Report and Recommendation on November 1, 2012 (ECF No. 83), recommending that the motions be granted and that plaintiff's claims be dismissed with prejudice because allowing him another opportunity to amend would be futile. Plaintiff was served with the Report and Recommendation at his listed address and advised that he had until November 19, 2012, to file written objections. On November 9, 2012, he was granted an extension to December 3, 2012, to file objections. On November 16, 2012, the court received a two-page document that plaintiff titled "Response." (ECF No. 85.) Being that the time to file objections has now expired, the court considers that plaintiff's "Response" contains his objections to the magistrate judge's report and recommendation and construes his filing as such. The "Response", however, does not controvert the recommendations made in the report. After *de novo* review of the pleadings documents and submissions in this case, together with the Report and Recommendation, and the objections thereto, the following order is entered.

AND NOW, this 17th day of December, 2012,

IT IS HEREBY ORDERED that the motions to dismiss filed by defendants NaphCare Inc. (ECF No. 71), The Commonwealth of Pennsylvania (ECF No. 73), and Westmoreland County and Westmoreland County Prison (ECF No. 76) are **GRANTED** and plaintiff's amended complaint is dismissed with prejudice; except that the dismissal is without prejudice with respect

to defendant's ability to file a new complaint asserting a claim under §1983 for a Sixth Amendment violation if his conviction is overturned or otherwise invalidated; the report and recommendation recommended dismissal of that claim because it could not be brought until plaintiff's conviction is overturned or otherwise invalidated. (ECF No. 83 at 18)

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lenihan dated November 1, 2012 (ECF No. 83) is adopted as the opinion of this court.

IT IS FURTHER ORDERED that the Clerk mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc: Timothy C. Lenhart
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